



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JAN 14 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5966 2533**

Mayor Noam Bramson  
City of New Rochelle  
515 North Avenue  
New Rochelle, New York 10801

Re: Administrative Order CWA-02-2013-3022  
City of New Rochelle  
SPDES Permit No. NYR20A207

Honorable Noam Bramson:

This is in reply to your January 3, 2013 request of the Environmental Protection Agency ("EPA") submitted by Dolph Rotfeld Engineering on behalf of the City for a time extension for the completion of tasks under the above referenced EPA Administrative Order. The final AO completion date was scheduled for March 31, 2013. However, based on impacts to New Rochelle infrastructure due to Hurricane Sandy, a revised completion date request is December 31, 2013.

We have reviewed the request and have determined that the information the City of New Rochelle submitted in your January 3, 2013 letter is reasonable and justifies a force majeure extension, therefore EPA is approving the City's request to complete IDDE track down by June 30, 2013, and complete all necessary remedial work by December 31, 2013. We have revised paragraph 3(c) of the POA of the Compliance Order to reflect the change.

If you have any questions regarding this ORDER, please contact Mr. Jerry Ciotola at (212) 637-4223 or Mr. Douglas McKenna, Chief, water Compliance Branch at (212) 637-4244.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaPosta", is written over a horizontal line.

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

cc: Mr. Dan Peluso, Dolph Rotfeld Engineering  
Mr. Joseph DiMura, NYSDEC

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

**SPDES Permit No. NYR20A207**

**Respondent**

Administrative Order for Compliance  
pursuant to Sections 309(a) of the Clean  
Water Act, 33 U.S.C. § 1319

**ADMINISTRATIVE ORDER**

**CWA-02-2013-3022**

**STATUTORY AUTHORITY**

The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator of Region 2, EPA and further delegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated there under, as expressed in the specific terms and conditions prescribed in the applicable permit. Regulations implementing the NPDES permit program under the CWA include, but are not limited to, 40 CFR Parts 122 and 403.
3. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p)(2)(D) of the CWA, 33 U.S.C. § 1342(p)(2)(D), requires an NPDES permit to be issued for the discharge of storm water from a Municipal Separate Storm Sewer ("MS4") serving populations of 100,000 or more but less than 250,000.
4. Section 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent.

practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges, including the following:

- a. 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
- b. 40 C.F.R. § 122.26(b)(7)(i) defines "medium municipal separate storm sewer system," in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000; and
- c. 40 C.F.R. § 122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" municipal separate storm sewer systems;
- d. 40 C.F.R. § 122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.

6. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-08-002) ("Permit") on April 15, 2008. The permit became effective on May 1, 2008 and expired on April 30, 2010. The permit supersedes the previous SPDES permit (GP-02-02), which was effective on January 8, 2003 and expired on January 8, 2008. The previous permit was administratively extended until April 15, 2008, when SPDES GP-0-08-002 was issued. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) and became effective on May 1, 2010 and expires on April 30, 2015. The permit supersedes the previous SPDES permit (GP-0-08-002).

### **FINDINGS OF VIOLATION**

1. The City of New Rochelle is a municipal corporation chartered under the laws of the State of New York, and as such, the Permittee is a "person," as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an "incorporated place" as that term is defined in 40 C.F.R. § 122.26(b)(3).

2. At all times relevant to this Order, Permittee owned or operated the Municipal Separate Storm Sewer ("MS4"), located within the corporate boundary of the City of New Rochelle, Westchester County, New York and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the MS4 was a "point source" of a "discharge" of "pollutants," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. The MS4 discharges storm water to receiving waters of all areas, except agricultural lands, within the corporate boundaries of the City of New Rochelle, served by a MS4 owned or operated by Permittee. The Long Island Sound and other receiving waters are considered "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. The City of New Rochelle applied for and was issued SPDES Permit NYR20A207 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on March 10, 2003, expired March 9, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2008. At all relevant times, the City of New Rochelle was authorized to discharge from all portions of the MS4 owned or operated by the City of New Rochelle to waters of the United States, only in accordance with Permittee's Storm Water Management Program, specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.

5. The City of New Rochelle MS4 discharges storm water into one or more receiving waters that appear on the 303(d) list or for which a Total Maximum Daily Load ("TMDL") has been established. New Rochelle Harbor has been designated as an impaired water body with floatables and pathogens the primary pollutants of concern. Therefore, the City of New Rochelle is required to meet additional improvement and minimum control measures pursuant to Part IX C. Pathogen Impaired Watershed MS4 for New York State's General Permit for Stormwater Discharges from MS4s (GP-0-10-002).

6. The New York State Department of Environmental Conservation required that Permittees fully implement a SWMP by January 8, 2008. Permittees under GP-02-02 were required to develop, implement and enforce a program to detect and eliminate illicit discharges under Illicit Discharge Detection and Elimination (Part IV.3 of the permit). The City of New Rochelle developed an initial SWMP prior to March 10, 2003 but failed to fully implement the plan by January 8, 2008 deadline, and implement a SWMP ensuring that future discharges do not contribute to a violation of applicable water quality standards.

7. Both GP-02-02 and GP-08-002 expired on January 8, 2008 and April 30, 2010, respectively. The City of New Rochelle is required to continue permit coverage under GP-0-10-002, which became effective May 1, 2010 and expires April 30, 2015. In accordance with Part IV.D., covered entities authorized under GP-0-08-002 shall continue to fully implement their SWMP, unless otherwise stated.

8. On May 9, 2007, and May 17, 2007, EPA conducted MS4 compliance inspections of the City of New Rochelle, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318 (hereafter the "MS4 inspection"). Based on these inspections EPA identified discharges from the MS4 which appeared to contain sanitary sewage. As a result of those observations, it was determined that a follow-up sampling inspection should be performed.

9. On April 28, 2008 and March 18, 2009, EPA conducted wet weather sampling inspections at outfalls within the City of New Rochelle specifically sampling for fecal coliform and total coliform. The results of that sampling were used to determine whether storm sewer discharges were contributing to water quality impairments and to determine if coliform levels in the storm sewer discharges are substantially higher than water quality standards or ambient levels. Sampling verified that outfalls at the locations identified were discharging in excess of the NY Water Quality Standard of either 10,000 MPN /100ml for total coliform, and/or 2,000 MPN /100ml for fecal coliform.

10. The result of EPA's sampling locations are listed below:

<u>Location</u>	<u>Coliform (MPN/100ml)</u>	
	<u>Fecal</u>	<u>Total</u>
Purdy Avenue outfall near Westmore Fuel Co.	240,000 MPN/100ml	240,000 MPN/100ml
E. Broadway catch basin under train tressel	500,000 MPN/100ml	1,600,000 MPN/100ml
Midland Ave. & Slater Street catch basin	17,000 MPN/100ml	240,000 MPN/100ml
Midland Ave. & S. Main Street catch basin	13,000 MPN/100ml	170,000 MPN/100ml
Boston Post Rd. catch basin (drains to Purdy outfall)	3,000 MPN/100ml	17,000 MPN/100m

11. The samplings conducted by EPA on April 28, 2008, and March 18, 2009 supported a finding that there is a high potential for illicit sanitary connections to storm sewers which discharge into New Rochelle Harbor.

12. Based upon the field observations conducted by EPA on May 9, 2007, and May 17, 2007, sampling inspections conducted on April 28, 2008, and March 18, 2009, EPA determined that the City of New Rochelle was in noncompliance with the MS4 permit by failing to fully implement a comprehensive illicit detection and elimination program required by NYSDEC, by January 8, 2008, as part of their SWMP.

13. On February 13, 2009 EPA sent the City of New Rochelle Administrative Order CWA-02-2009-3002, as well as a copy of EPA's March 18, 2009 Wet Weather Compliance Sampling Inspection Report. The City acknowledged receipt of the Order and documents on April 14, 2009.

14. City of New Rochelle's failure to comply fully with the requirements of the MS4 permit, are violations of Section 301 (a) of the CWA, 33 U.S.C. § 1301(a), and a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

15. Appendix 2 of the New York State SPDES General Permit for Stormwater Discharge from MS4 identified New Rochelle Harbor as an impaired water-body for pathogens. The City of New Rochelle MS4 discharges to New Rochelle Harbor contribute to violations of applicable water quality standards for pathogens, a pollutant of concern.

16. The City of New Rochelle failed to develop, implement, and enforce, and effectively prohibit, illicit discharges into the storm sewer system and implement appropriate enforcement procedures as required under Permit Number GP-02-02, GP-0-08-002, and GP-0-10-002, the current New York State Department of Environmental Protection SPDES General Permit for Stormwater Discharges from MS4s.

17. Part VII.A.3.g of the Permit requires the permittee to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4. The program must include: procedures for identifying priority areas of concern (geographic, audiences or otherwise) for IDDE program; description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (track-down); procedures for eliminating illicit discharges; and procedures for documenting actions. The City of New Rochelle failed to implement paragraphs f. (prohibit illicit discharges into the MS4) and g. (develop and implement a program to detect and address non-stormwater discharges).

18. A meeting was held in EPA Region 2 offices on May 20, 2010 to discuss the basis for a revision of the completion of the Plan of Action contained in EPA AO CWA-02-2009-3002. A request by the City of New Rochelle to revise the schedule to complete the work required under the Plan of Action was discussed. A new revised on EPA-CWA-02-2010-3051 was issued on August 31, 2010. Subsequently, Hurricane Sandy struck the New York metropolitan area on October 31, 2012. Based on the storm tidal surge during the event, New Rochelle suffered severe infrastructure impacts, necessitating a force majeure request on January 3, 2013. EPA evaluated the request, taking into consideration the ongoing progress the City of New Rochelle has made since that meeting, and has determined that a revised schedule is reasonable.

19. In consideration of the above Findings, and pursuant to the provisions of Sections 308 and 309(a) of the CWA, 33 U.S.C. § 1318 and § 1319(a), EPA has determined that compliance with the following requirements is reasonable.

### **ORDERED PROVISIONS**

1. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Permittee is hereby ORDERED to take the actions described below.

2. Immediately upon receipt of the original copies of this Order, a responsible official of the City of New Rochelle shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

3. The City of New Rochelle shall take all corrective actions necessary to eliminate illicit connections identified by the sampling and track down program and implement all requirements of the MS4 permit, including the following:

- a. The City of New Rochelle shall continue to implement the August 12, 2008 Plan of Action, and shall comply with all requirements of Administrative Order CWA-02-2009-3002, with the exception that all dates in the Plan of Action will be superseded by this Order.
- b. The City of New Rochelle shall prepare, implement and enforce a Stormwater Management Program pursuant to the requirements of Part IV of the NYSDEC SPDES General Permit for Stormwater Discharges from MS4 (GP-0-10-002). The Stormwater Management Program shall specifically address the identification of illicit connections to minimize discharges and sources of pathogens in the New Rochelle storm system.
- c. The City of New Rochelle shall implement a Plan of Action according to the following revised schedule:

<b><u>Item</u></b>	<b><u>To be completed no later than</u></b>
Complete all track-down (video inspection, smoke/dye testing, and sampling) of the system	June 30, 2013

Complete all work necessary pursuant to the Plan to eliminate illicit sanitary connections to the City of New Rochelle storm water system.

December 31, 2013

Submit semi-annual progress reports to EPA and NYSDEC outlining all activities undertaken, results of verification sampling and costs associated with compliance sampling and testing this Order.

April 30, 2013  
October 31, 2013

Submit final report to EPA and NYSDEC summarizing all activities taken to come into compliance.

December 31, 2013

4. The City of New Rochelle shall continue to submit all reports required by the SPDES General Permit for Storm Water Discharges from MS4.

5. All information required to be submitted by this Order shall be sent by certified mail or its equivalent to the following addresses:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
290 Broadway, 20th Floor  
New York, NY 10007-1866

Joseph DiMura, P.E.  
Director, Bureau of Water Compliance Programs  
Division of Water  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-3506

#### GENERAL PROVISIONS

1. Any documents to be submitted by the City of New Rochelle as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. The Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer, regarding the Ordered provisions, with the following designated Agency representative:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, New York 10007-1866  
212-637-4244

3. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, which provides the grounds for such review.

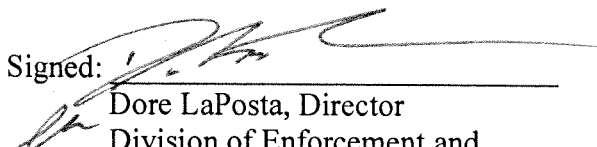
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.

5. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order Respondent may be subject to (1) civil penalties up to \$37,500 per day for each day of violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and/or (2) injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as imposed by the Court.

6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 1/14/13

Signed:   
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

City of New Rochelle  
515 North Avenue  
New Rochelle, NY 10801

**SPDES Permit No. NYR20A207**

**Respondent**

Administrative Order for Compliance pursuant  
to Sections 309(a) of the Clean Water Act, 33  
U.S.C. § 1319

**ADMINISTRATIVE ORDER**

**CWA-02-2013-3022**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an official of City of New Rochelle

with the title of, \_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
ADMINISTRATIVE ORDER, City of New Rochelle CWA-02-2013-3022.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_